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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FEB - 2 2006
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CLERK, U.S. DISTRICT COURT
By

DARRYL DEWAYNE FRAZIER,

Petitioner,

v.

DAN JOSLIN, Warden,
FCI-Seagoville,

Respondent.

Civil Action No. 3:05-CV-2539-M

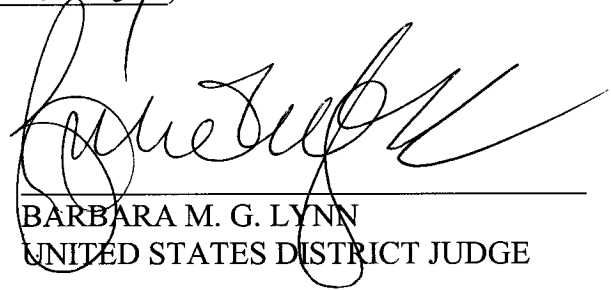
**ORDER ACCEPTING FINDINGS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

After making an independent review of the pleadings, files and records in this case, and the Findings, Conclusions and Recommendation of the United States Magistrate Judge dated January 18, 2006, the Court finds that the Findings and Conclusions of the Magistrate Judge are correct and they are accepted as the Findings and Conclusions of the Court. The Court notes that like *Booker*, *Shepard v. United States* is not retroactive to cases on collateral review. See *Duong v. United States*, No. C-05-229, 2005 WL 3312630 (S.D. Tex. Dec. 6, 2005); *United States v. Ramirez-Villaneuva*, No. 3-05-CV-1285-K, 2005 WL 2124151 (N.D. Tex. Aug. 1, 2005) (Kaplan, J.), citing *Vega V. Craig*, 2005 WL 1388872 at *2 (N.D.N.Y. Jun. 9, 2005) (holding that *Shepard* does not apply to cases already final); *Olivas-Guitierrez v. United States*, 2005 WL 1241871 at *4 (W.D. Tex. May 19, 2005) (same); *Langley v. United States*, 2005 WL 1114710 at *2 (M.D.N.C. May 5, 2005); *Morales v. United States*, 2005 WL 807051 at *7 (D. Minn. Apr. 7, 2005) (same). Petitioner must challenge his conviction and sentence in a section 2255 motion.

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Because petitioner was convicted in the Western District of Texas, the case must be dismissed
for lack of subject matter jurisdiction.

IT IS, THEREFORE, ORDERED that the Findings and Recommendation of the
United States Magistrate Judge are accepted.

SO ORDERED this 2^d day of February, 2006.



BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE